

THE STATE OF NEW HAMPSHIRE  
DEPARTMENT OF ENVIRONMENTAL SERVICES  
WATER COUNCIL

**RECEIVED**

Appeal of Selectmen of the Town of Nottingham  
Docket No. 04-15-WC

**NOV 05 2004**

**THE TOWN OF NOTTINGHAM SELECTMEN'S**  
**MOTION FOR RECONSIDERATION**

The Selectmen of the Town of Nottingham ("Nottingham") move that the Water Council reconsider its decision presented at its meeting October 13, 2004, dismissing the appeal and in support thereof states as follows:

1. In this case, Nottingham filed a Notice of Appeal to the Water Council under RSA 21-O:7 dated July 30, 2004 appealing a decision of the Department of Environmental Services ("DES") Water Division which granted a large groundwater withdrawal permit to USA Springs, Inc. on July 1, 2004.
2. DES moved to dismiss the appeal through a pleading filed by the Office of the Attorney General.
3. RSA 21-O:7 provides for a mandatory appeal to the Water Council to hear and decide all appeals from decisions of the DES Division of Water.
4. Nottingham's Notice of Appeal attached its request for rehearing to DES dated July 30, 2004, which set forth all of the grounds upon which Nottingham believed the DES Water Division decision was unlawful and unreasonable. Nottingham asked that the Water Council find the DES decision to be unlawful and unreasonable based upon the grounds presented in that request for rehearing.

5. The Water Council dismissed Nottingham's appeal at its meeting October 13, 2004 and has not yet issued a written decision indicating the basis for that decision. Nottingham believes that the Water Council assumed it did not have jurisdiction to hear the appeal.

6. Nottingham believes the decision of the Water Council dismissing its appeal is unlawful and unreasonable because it does have jurisdiction to hear the appeal and for all of the reasons set forth in its Notice of Appeal dated July 30, 2004 and in its Objection to Motion to Dismiss Appeal dated August 6, 2004 (which are incorporated by reference herein), including but not limited to the following:

A. RSA 21-O establishes a mandatory review of Water Division decisions by the Water Council. RSA 21-O establishes a comprehensive appeals structure to ensure that all decisions from various DES divisions are reviewed by an independent appeal board with the opportunity for adjudicative hearing (although wetlands decisions are specifically excepted from the adjudicative hearing process). Dismissal of Nottingham's appeal by the Water Council is contrary to the appeal structure established by law under RSA 21-O.

B. RSA 481:1 demonstrates the New Hampshire Legislature's deep concern about the stewardship of the valuable and limited groundwater resource of New Hampshire. The Water Council's decision, which appears to conclude that the Water Council does not have jurisdiction to review large groundwater withdrawal decisions, is contrary to the Legislative intent and means that these important matters will not receive the independent review intended by law under RSA 21-O.

C. On information and belief, the Water Council, dismissed the appeal relying upon the advice of the Office of the Attorney General (which had also moved to dismiss the appeal). Nottingham believes that the Water Council relied at least in part upon an interpretation of a letter dated September 2, 2004 from Senior Assistant Attorney General Jennifer Patterson to Michael P. Nolin, Commissioner of DES (attached as Exhibit A). If this letter formed the basis of the Water Council's dismissal of Nottingham's appeal, the Water Council's decision would be unlawful and unreasonable. The letter relates to an interpretation of the Comprehensive Shore Land Protection Act, RSA 483-B. Nothing in that letter, (which with due respect is simply guidance of one attorney in the Attorney General's Office) mandates dismissal of Nottingham's appeal from the decision of the DES Water Division. In fact, Principles of statutory construction and interpretation of the relationship between RSA 21-O and RSA 541 dictate that the Water Council accept this appeal and conduct an adjudicative hearing in accordance with its responsibility under RSA 21-O:14. Appeal from a decision based upon an adjudicative hearing is to the Supreme Court in accordance with the provisions of RSA 541.

D. As previously pointed out, the two statutes (RSA 485C:21 and RSA 210:7) which appear on the surface to suggest contrary appeals parties, can and should be read in a way that gives effect to both statutes. That reading dictates that the Water Council must take jurisdiction of this appeal, and conduct is adjudicative hearing. Appeal to the Supreme Court under RSA 541 would follow if necessary.

In conclusion, the Water Council's decision dismissing Nottingham's appeal is unlawful and unreasonable for the reasons set forth herein and set forth in its objection to the Motion to Dismiss Appeal dated August 6, 2004, and in its Notice of Appeal dated July 30, 2004, with attachments thereto, all of which are incorporated by reference as if fully set forth herein.

Respectfully submitted,

TOWN OF NOTTINGHAM SELECTMEN

By its attorneys,  
Nelson, Kinder, Mosseau & Saturley, P.C.

**COPY**

Dated: November 3, 2004

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**CERTIFICATE OF SERVICE**

I hereby certify that copies of the foregoing have been mailed, first class, and postage prepaid Mark Beliveau, Esquire, Armand Hyatt, Bill McCann, S.O.G., Assistant Attorney General Richard Head, and Assistant Attorney General Anne M. Edwards, Esquire.

**COPY**

E. Tupper Kinder, Esquire